D.B. CIVIL SPECIAL APPEAL (WRIT) NO.401/2005

Moola Ram Vs. State of Raj.

Date : 25.07.2006

PRESENT

HON'BLE MR. JUSTICE RAJESH BALIA
HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. G.R. Punia for the appellant.
Mr. K.L. Thakur, Addl. Advocate General.

BY THE COURT: (PER HON'BLE RAJESH BALIA J.)

Having heard learned counsel for the parties, we are of the opinion that there is no merit in the appeal.

The undisputed facts of the present case are that the appellant-petitioner, officer in cadre of RAS, while working as Assistant Commissioner Colonisation, Chhatargarh in Bikaner District was trapped by Investigation Bureau of Rajasthan, Bikaner on 4.4.1992 in a case of corruption and he was suspended by order dated 27.4.1992 and in this connection during the pendency of enquiry, the order of suspension was served on the delinquent on 1st May, 1992. However, after the order of suspension was served on the appellant-petitioner, he continued to discharge the functions of the post and he passed certain orders which according to the him were for mere completion of transactions which were

already sanctioned by him earlier to the order of suspension was served on him.

The present proceeding has arisen as a result of the charge sheet served on the deliquent on 24th August, 1994 about exercising the power by the delinquent as Assistant Commissioner Colonisation on 2nd May, 1992, even after he was suspended in charge of corruption vide order dated 27th April, 1992 which was served on him on 1st May, 1992. After serving the memorandum of charge, the enquiry was conducted. On 19.8.1995, the enquiry report was submitted by the Enquiry Officer finding the charges proved against the delinquent.

Considering the enquiry report and explanation submitted by the delinquent officer which was by nature of apology inter alia on the ground that he has not acted malafide and had no intention of extending any benefit to the persons in whose favour the allotment sought to be completed.

The State Government, which is the disciplinary authority accepted the finding of the enquiry officer and imposed penalty of compulsory retirement on proportionate pension. The order of imposition of penalty was passed on 17.12.1998. The

impugned order was passed after enquiry report had been submitted to the delinquent officer and he was given opportunity to explain his defence in support of his case and against the enquiry report.

A review petition against the order of punishment was also rejected vide order dated 1st December, 1998.

The petitioner aggrieved with the aforesaid orders filed S.B. Civil Writ Petition No.2480/2000. The learned Single Judge considering the aforesaid facts and circumstances did not find it a case for interference in exercise of extra-ordinary jurisdiction. He was of the opinion that if a person assumes powers to exercise even after suspension then he has exercised the jurisdiction not vested in him, he can be said to be usurper and if the State Government has chosen to punish him, it cannot be said that punishment is without delinquency. The learned Single Judge was further of the view that exercise of powers without authority is a serious delinquency and the punishment cannot be considered to be dis-proportionate.

The only contention raised before us by learned counsel for the appellant is in accordance with explanation

submitted by the appellant before the disciplinary authority in response to notice after enquiry report was furnished to him, that his action in making order even after he has received a suspension order was not malafide and was not to derive any benefit for himself or to extend any benefit to any person.

This submission made by learned counsel for the appellant does not commend itself. The background of suspension order being clear, the person being a senior RAS officer cannot be said to be not aware of the fact that once suspension order becomes effective, he is denuded of any authority for discharging any function of the office held by him at the time of suspension order was made and he cannot exercise any powers of his office. Notwithstanding this, he exercised his powers as if he was continuing in office for completing the transaction, which were left incomplete while he was in office itself speaks in volumes about intention of the delinquent officer.

In the facts and circumstances, we are of the opinion, that the learned Single Judge was justified in coming to the conclusion that the punishment imposed was not disproportionate to the misconduct proved.

Accordingly, the appeal fails and is hereby dismissed.

[GOPAL KRISHAN VYAS], J. [RAJESH BALIA], J.

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